

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES KELLY,

Plaintiff,

v.

CSE SAFEGUARD INSURANCE
COMPANY,

Defendant.

Case No. 2:08-CV-88-KJD-RJJ

ORDER

Presently before the Court is Defendant's Motion for Attorney's Fees (#179). On September 27, 2011 the Court granted (#168) Defendant's motion for summary judgment. Judgment (#169) was entered for Defendant on September 28, 2011. Plaintiff filed his Notice of Appeal (#172) on October 13, 2011. Defendant filed the present motion on October 19, 2011.

Plaintiff's appeal in this action is still pending. Though the Court is not divested of jurisdiction to decide the issue of attorney's fees during the pendency of the appeal, the Court finds that judicial economy would be best served by denying the motion without prejudice. The outcome on appeal would certainly influence the outcome of the motion. Furthermore, given that Defendant seeks \$182,000.00 in attorney's fees, Plaintiff should be given a chance to respond to the motion. It appears that Plaintiff believes the motion to be untimely or briefing to be stayed pending the

1 appeal. However, Federal Rule of Civil Procedure 54(d)(2)(E) exempts motions made under 28
2 U.S.C. § 1927 from Rule 54's timing requirements.

3 Accordingly, Defendant's Motion for Attorney's Fees (#179) is **DENIED without prejudice**
4 subject to renewal upon resolution of the pending appeal.

5 DATED this 15th day of August 2012.

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Kent J. Dawson
United States District Judge